

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON

TRANSCRIPT OF PROCEEDINGS

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IN RE: ETHICON, INC., PELVIC REPAIR  
SYSTEM PRODUCTS LIABILITY LITIGATION

MDL NO.  
2:12-MD-2327  
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TELEPHONIC MOTIONS HEARING

May 27, 2016

**BEFORE THE HONORABLE CHERYL A. EIFERT  
UNITED STATES MAGISTRATE JUDGE**

Court Reporter:

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produced by computer.

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P R O C E E D I N G S

JUDICIAL ASSISTANT: Hello, everyone. This is Laura, Judge Eifert's Judicial Assistant. There's a little bit of static on the line. Is someone on a cell phone perhaps?

MR. BERNARDO: Not -- this is Rich Bernardo for Ethicon. We are not on a cell phone. We're on a land line. I hear the static as well.

MS. BAGGETT: This is Renee Baggett and Bryan Aylstock for the plaintiffs and we, we are also on a land line.

JUDICIAL ASSISTANT: All right. Thank you.

All right. I'd like to confirm our court reporter today, Lisa Cook, is on the line.

COURT REPORTER: Hi, Laura. Yes, I'm here.

JUDICIAL ASSISTANT: Hi, Lisa. Thank you.

And, of course, we're here regarding *Ethicon, Inc.*, Case Number 2:12-MD-2327.

So other than Renee and Bryan, is there anyone else on the line for plaintiffs?

MS. BAGGETT: No, ma'am.

JUDICIAL ASSISTANT: Thank you.

Ethicon, anyone else besides Mr. Bernardo?

MS. SHAH: Yes. Hi, Laura. This is Robin Shah for Ethicon.

1 JUDICIAL ASSISTANT: Robin, I'm sorry, I did not  
2 get your last name.

3 MS. SHAH: Shah, S-h-a-h.

4 JUDICIAL ASSISTANT: Thank you.

5 MR. BERNARDO: And also I conferenced in -- I  
6 apologize, I forgot to hit the conference button when we  
7 started -- Chris Morris also for Ethicon.

8 Chris, are you on? Chris.

9 (No Response)

10 MR. BERNARDO: Just one second. Let me make sure.  
11 I think we're missing one person, Your Honor.

12 JUDICIAL ASSISTANT: All right. This is Laura.  
13 I'll hold. Thank you.

14 (Pause)

15 JUDICIAL ASSISTANT: The sound that we're  
16 hearing -- I know in the past when the parties have been  
17 using a speakerphone, that has sometimes caused the static  
18 noise and we've had to ask them to mute the phone when  
19 they're not speaking. So I'm not sure if someone is on a  
20 speakerphone. That may account for it.

21 MR. AYLSTOCK: Laura, this is Bryan. Why don't I  
22 mute it and see if that helps.

23 JUDICIAL ASSISTANT: Okay. Thank you. Yeah,  
24 perfect. Thank you.

25 MR. BERNARDO: So it's your fault, Bryan.

1 MR. AYLSTOCK: Well, I didn't know. I'm not on a  
2 cell phone at least.

3 JUDICIAL ASSISTANT: Anyone else on the line?

4 MR. MORRIS: Hi. This is Chris Morris. I  
5 apologize. I had phone issues, but I'm here now.

6 JUDICIAL ASSISTANT: All right. Thank you. Just  
7 to remind everyone to identify yourself when speaking, and  
8 if you'll hold one moment for Judge Eifert.

9 (Pause)

10 THE COURT: Good afternoon.

11 MR. BERNARDO: Good afternoon, Judge Eifert. How  
12 are you today?

13 THE COURT: I'm fine. How is everyone?

14 MR. BERNARDO: I'll speak for myself. This is  
15 Rich Bernardo. I'm doing fine. And thank you for taking  
16 time on a Friday before Memorial Day weekend to chat with  
17 us. We appreciate that.

18 THE COURT: No problem.

19 All right. I reviewed the letter and see that -- I've  
20 looked at the plaintiffs' fact sheet and all the  
21 attachments. And I also looked at the Pre-Trial Order 217  
22 which is the docket control order for wave one cases.

23 So who wants to tell me what's happening?

24 MR. BERNARDO: This is Rich Bernardo, Your Honor.  
25 Since I sent you the letter, why don't I see if I can set

1 the table, if you will, here.

2 So this is, I'll say, a bit of a housekeeping issue.  
3 And the call really pertains to some difficulties that  
4 defendants have been having obtaining medical records with  
5 respect to the cases that have been selected for the wave  
6 process to get worked up for trial.

7 And, obviously, it's our position that the medical  
8 records are among the key materials that we need to prepare  
9 cases, to take depositions of the plaintiffs, of the  
10 treaters, of experts, et cetera.

11 And there's a process in place through one of the  
12 documents you raised, Your Honor, from the plaintiffs' fact  
13 sheet that specifically identifies the records to which  
14 we're entitled without exception.

15 And, obviously, particularly with respect to these wave  
16 cases where depositions are going on, many of them literally  
17 every day of the week, there's really not a lot of time to  
18 go back and forth with plaintiffs and dispute what records  
19 we should get or shouldn't get.

20 We, we are concerned that that's going to slow down  
21 being able to take depositions or, worse yet, result in  
22 depositions having to be taken a second time if we  
23 ultimately prevail on an issue.

24 Before I explain briefly what isn't working, let me  
25 just take a moment to say what is working, Your Honor, and

1 put the issue in context.

2 Most plaintiffs are cooperating and we're, we're  
3 getting what we need. And I just want to start out on that  
4 positive note now. And I also want to thank Ms. Baggett  
5 from plaintiffs' counsel who's on the phone because we've  
6 been raising these issues with her and she's really been  
7 helping us work through them.

8 We understand there are a lot of moving parts here.  
9 There are a lot of law firms. There are a lot of parties.  
10 We thoroughly understand that and are mindful of it. So I  
11 just want to start out on a positive note of what is working  
12 as we're getting, you know, what we need from most  
13 plaintiffs.

14 But there are a number of them, and it's not  
15 insignificant, where we're still having some difficulties.  
16 Some plaintiffs are just not responding at all. Some  
17 plaintiffs are taking the position that they should only be  
18 required to provide records for some limited period of time.

19 Some are taking the position that they shouldn't have  
20 to produce certain types of medical records if certain  
21 claims aren't being made. Some are taking the position that  
22 if they sign the authorization and get the medical records  
23 that they can then later object to giving us the medical  
24 records and we'll have to come to Your Honor to make a  
25 motion.

1           And it's our position, again, that we're entitled to  
2 all the medical records that are identified or for which  
3 there are authorizations in the plaintiffs' fact sheets,  
4 period.

5           However, we recognize there's a little bit of, I'll  
6 say, disconnect loosely between some orders that we've been  
7 talking with Ms. Baggett about. And that's where, Your  
8 Honor, we, we thought it made sense to come to you and try  
9 and sort through that before inundating the Court with many  
10 motions to compel, going through case after case of the  
11 particular circumstances and why we think we need the  
12 records.

13           So one issue, Your Honor, that we think would help cut  
14 through this is those two orders that we sent to you and  
15 asked you to take a look at.

16           And first with respect to PTO Number 40, so that's the  
17 Pre-Trial Order that pertains to the fact sheet. And that's  
18 the one I was referring to earlier where if you go in the  
19 back, the Appendix A, it has all the authorizations. And  
20 it's very, very clear and specific as to what authorizations  
21 are to be filled out and there's no process to object.

22           And we think that makes sense because this is, this is  
23 the document that's filled out by plaintiffs who have been  
24 selected to have their cases worked up for trial. So,  
25 obviously, we believe it intentionally requires more



1 information to be given so that we can take meaningful  
2 depositions and work up the cases appropriately. There's a  
3 sanctions provision on the second page of it for failure to  
4 comply.

5 There's also, as Your Honor pointed out, Pre-Trial  
6 Order Number 17. This one is different insofar as it  
7 relates to all plaintiffs and, and has the core information  
8 that should be provided. So this is not one where the  
9 plaintiffs are on the fast track for having depositions  
10 taken and expert disclosures and treaters, et cetera.

11 So we can appreciate why in this one there would be an  
12 opportunity for a plaintiff to raise their hand and say,  
13 "Wait a minute. I don't think this should be provided."  
14 But even if it's not provided with -- it's only with respect  
15 to mental health records. Even if it's not provided, it, it  
16 calls for some objection based upon a privilege and  
17 presumably would require a privilege log.

18 While we agree with plaintiffs that it's not  
19 necessarily clear which one rules here, we just think that  
20 for this process to allow during the work-up of these cases  
21 during the wave for plaintiffs to sign the authorizations  
22 and say, "Okay, but we're not going to give you these mental  
23 health records because we don't think they're relevant  
24 here," and put the onus on us to come back and explain why  
25 they're relevant is going to take a tremendous amount of

1 time and be a drain on all the parties' resources and the  
2 Court's resources.

3 And one thing I promised the plaintiffs, Your Honor,  
4 was I wasn't going to get into a particular case because  
5 that would be unfair for, you know, the plaintiff's attorney  
6 for that case not to be represented.

7 So I said what I would do is give you a hypothetical,  
8 Your Honor, of a type of situation where, you know, it's  
9 representative of the kind of situation we're getting just  
10 to show you how we'd end up having to make a motion.

11 So in this hypothetical situation, a plaintiff would  
12 take the position that they're not asserting an emotional  
13 distress claim. Therefore, we're not entitled to mental  
14 health records.

15 But in this hypothetical claim, the plaintiffs are also  
16 claiming -- or the plaintiff is also claiming that she can't  
17 have sexual relations as a result of her mesh.

18 And in the medical records in this hypothetical case  
19 that have been produced already, there have been significant  
20 identification of mental health and psychological issues  
21 that particularly focus on the inability for this plaintiff  
22 to have normal sexual relations prior to receiving the mesh.

23 So we say, well, we understand you're not making an  
24 emotional distress claim, but mental health records are  
25 particularly relevant here. And, again, this is

1     hypothetical, but it's representative of the types of  
2     issues.

3             And we feel that we shouldn't have to go in these types  
4     of claims and make motion after motion to get what we  
5     believe we're entitled to be getting pursuant to the order  
6     that was issued under Pre-Trial Order Number 40.

7             We're very mindful, Your Honor, of the sensitivity of  
8     these records. We're mindful of the privacy of these  
9     plaintiffs. But we're also mindful of the fact that we're  
10    being asked to put together a case and take a meaningful  
11    deposition of various parties.

12            There are protective orders in this action. Nobody is  
13    going to misuse records. We're going to be as respectful as  
14    we can. But we feel as if we're entitled to the information  
15    that has been identified.

16            So what we're asking for, Your Honor, is I guess, if  
17    you agree with us, to rule that during the wave process,  
18    pursuant to Pre-Trial Order Number 40, that the plaintiffs  
19    have to provide the authorization; that they can't limit the  
20    authorization either in time or scope or provider. They  
21    have to provide the authorizations. And they can't, once  
22    they provide the authorizations, then say, "But we're not  
23    going to give you the medical records."

24            And if they don't do all of that, then we're also  
25    asking that their case get removed from the wave cycle

1 because we don't feel as if we're being given a reasonable  
2 opportunity to put that case together for trial.

3 So that's, that's our position, Your Honor.

4 THE COURT: All right. So let me hear from the  
5 plaintiffs then.

6 MS. BAGGETT: Yes, Your Honor. Good afternoon.  
7 This is Renee Baggett for the plaintiffs.

8 As Mr. Bernardo indicated, we have been working with  
9 them to try to resolve any issues with regards to  
10 deficiencies with the plaintiffs' fact sheets and the  
11 plaintiffs' profile forms for quite some time.

12 My understanding is that there are very few cases that  
13 have this particular issue, at least with regards to the,  
14 the, being able to produce records.

15 And we've had conversations with these firms and  
16 explained to them that, you know, this was a negotiated  
17 document. The parties agreed on the language and the terms  
18 to this document but, yet, that there is a provision per PTO  
19 17 that allows the withholding or redacting of information  
20 or medical records based on a privilege.

21 And just because PTO 40 was entered into at a later  
22 time with regard to the late cases, we do not feel that it,  
23 it took the place of PTO -- the provisions in PTO 17 which  
24 laid out the parties' rights with regard to completing these  
25 documents.

1           In these situations, I've spoken with the firms that  
2           have expressed a concern with regards to providing these  
3           records and they've assured me that, obviously, they do not  
4           feel, based on the fact that they are not claiming a mental  
5           injury, that these, these records are not relevant and, and  
6           are more prejudicial than they would be helpful in any  
7           event.

8           But this, this provision is something that both parties  
9           have available to them. Defendants have used it repeatedly  
10          in document production in the past to redact and assert a  
11          privilege on documents that they felt were more prejudicial  
12          to their, their client.

13          And that's, that's the way this process is supposed to  
14          work so that if there is some information that should be  
15          protected, especially in a litigation as sensitive as the  
16          one we're in with these women who this is a very personal  
17          injury to begin with, and to compound that by putting them  
18          through an unnecessary inquiry into their, their, their  
19          mental state if it does not have any relevance we feel is  
20          unnecessary and it provides opportunity -- when it's that  
21          few, we have a mechanism in place for the defendants to  
22          address those individually rather than to compel all women  
23          that aren't asserting these claims to be required to provide  
24          that information.

25                 THE COURT: All right. Well, let me tell you how

1 I'm reading these documents. I read these documents as  
2 requiring the plaintiffs to sign authorizations that would  
3 allow all of these records to be collected and, according to  
4 Pre-Trial Order 17, submitted to a vendor, a records  
5 collection vendor.

6 Then as I read Pre-Trial Order 17, the plaintiffs, when  
7 it comes to psychiatric records, would have the first  
8 opportunity to look at the psychiatric records and assert  
9 any privilege that they feel attaches to those records. And  
10 they would have 10 days to do that and produce a privilege  
11 log.

12 If they fail to produce a privilege log in that 10-day  
13 period, then the vendor automatically releases the records  
14 to the defendant. That's what Pre-Trial Order 17 says.

15 But even Pre-Trial Order 17 presumes that the  
16 authorizations are going to be signed and the records are  
17 going to be produced. I don't see anything in either of  
18 these pre-trial orders that talked about redactions being  
19 made or authorizations being withheld or records not being  
20 produced or somebody signing an authorization and then  
21 saying, "Don't produce the records." None of that is  
22 allowed under either one of these pre-trial orders.

23 I think the, the intention of the pre-trial order is  
24 that all of the records will be produced and collected and  
25 will be sitting somewhere. I think the other intention of

1 these pre-trial orders is that this was all to be done a  
2 long time ago.

3 Even if you look at, you know -- well, first of all, if  
4 you start with Pre-Trial Order 17, this should have been  
5 done in 2012.

6 If you look at Pre-Trial Order 40, I think it should  
7 have been done in 2013.

8 If you look at Pre-Trial Order 217, which would be the  
9 docket, third amended docket control order for wave one  
10 cases, the fact sheet, including the authorization, should  
11 have been completed by October of 2015, which means that the  
12 records should have been produced per HIPAA within we'll say  
13 a couple of months to give, give us enough time to get the  
14 authorizations to the healthcare providers, which means by  
15 the end of 2015 any objections, any privilege logs should  
16 have already been prepared and should have been produced to  
17 the defendant.

18 The way I read these orders, if there weren't privilege  
19 logs submitted by plaintiffs by the end of 2015 at the very,  
20 very latest, then all of these records should have been  
21 produced by now.

22 MR. AYLSTOCK: Your Honor, --

23 THE COURT: That's assuming that you can withhold  
24 the psychiatric records. I don't think there's been  
25 anything in any of these orders that even implies in any way

1 that these records are not going to be relevant.

2 It looks to me like there was some presumption on the  
3 part of both sides that all of these records were going to  
4 be at least relevant for the purposes of discovery, perhaps  
5 not admissible by the time you get to the trial. But for  
6 the purposes of discovery, they were all going to be  
7 collected and available subject to protective orders.

8 So I'm having a hard time understanding why the  
9 plaintiffs -- why there is any plaintiffs' lawyer  
10 withholding any of these documents. And if that's  
11 happening, it is way too late for that to be happening under  
12 any of these orders.

13 MR. AYLSTOCK: Your Honor, this is Bryan Aylstock.  
14 May I jump in?

15 THE COURT: Yes.

16 MR. AYLSTOCK: I think what the Court's missing  
17 is -- you're exactly right. PTO 17 was entered eons ago it  
18 seems like. For me it's been two kids ago.

19 But what, what unfortunately happened after PTO 17 and  
20 these plaintiff profile forms along with the same  
21 authorizations were sent to Ethicon, they sat in Ethicon's  
22 files. All of the medical records that were in the  
23 possession of the plaintiff had to be produced. The  
24 procedure file form had to be done. The authorizations had  
25 to be done.



1           Ethicon chose not to go, ever order those records until  
2 they got set for a wave. So we did not have -- and as  
3 you're aware, PTO 17 and PTO 40 were negotiated PTOs. And  
4 we negotiated, because we anticipated there would be issues,  
5 a specific provision that allowed for any plaintiff or  
6 plaintiffs' attorney to assert a privilege in particular to  
7 psychiatric related records and to, again, within 10 days  
8 have a privilege log that would allow that plaintiff or  
9 plaintiffs' attorney to assert a privilege if done timely  
10 and, and redact or withhold that information.

11           We completely agree with Your Honor. In fact, Ms.  
12 Baggett and I have had specific conversations with counsel  
13 out there saying, no, you have to give the authorizations  
14 that are required. But -- and, and they wanted to bring it  
15 to the Court initially.

16           And what we said is, no, no, the way that it works, and  
17 what was specifically negotiated by us on your behalf with  
18 Ethicon, is you give them the authorization so the records  
19 could be ordered and, as exactly you said, sit somewhere so  
20 that we wouldn't have any delay, but you would have the  
21 opportunity on behalf of your client to assert a recognized  
22 privilege. And, as you know, in a lot of states there's a  
23 very high burden on some of these mental health issues.

24           Now, the example Mr., Mr. Bernardo gave, you know, I  
25 see his point. Maybe that's one example. And I guess it is

1 one example. But the idea that all of a sudden we need  
2 clarification because this is a rampant issue is foreign to  
3 me because we fixed these issues when, when we were notified  
4 by Ethicon by doing our jobs as lead counsel and telling  
5 them, "No, no, no, this is how you do it and this is how  
6 you -- if you have the objection, this is how you object."

7 The fact that Ethicon chose not to order these records  
8 until well after the wave, you know, much less PTO 17,  
9 they're very quick to, to run to the Court for sanctions and  
10 ask these women to pay a thousand dollars or have their case  
11 dismissed if they don't sign a form or something. But  
12 they're not very quick to go order the records. And that's  
13 really the fundamental problem here.

14 THE COURT: Well, all I know is that under the,  
15 under the third amended docket control order, the fact  
16 sheets, meaning the fact sheets with the authorizations,  
17 were to be provided by October 19, 2015.

18 What I understood Ethicon to say is they have cases now  
19 where they're not getting these signed authorizations, or  
20 they're getting signed authorizations and when they go to  
21 collect the records, they're being told by the providers  
22 that the plaintiff has essentially withdrawn the  
23 authorization for psychiatric records, so they aren't  
24 getting these records.

25 Now, if what's happening is the plaintiffs have filled

1 out their, their forms and they've filled out the  
2 authorizations and they haven't withdrawn those  
3 authorizations and the records are being produced and  
4 they're sitting at a vendor, with a vendor as, as is, is  
5 what is supposed to happen under the process set forth in  
6 these prior pre-trial orders, and the, the plaintiffs are  
7 filling out the privilege log within the ten-day period,  
8 then we don't have a problem that I can see.

9 All of that should have been done by now. And then if  
10 there were issues with what was being claimed as a  
11 privilege, that would be a different story. I guess those  
12 things could be brought to me. I would think you would be  
13 able to resolve those. If not, we could address that.

14 But that's not what I'm hearing is happening right now.  
15 What I'm hearing is that we're not even at that point. What  
16 I'm hearing is that plaintiffs are not doing the first part  
17 of what they're supposed to do which is sign the  
18 authorizations, allow the records to be collected, and fill  
19 out the privilege log.

20 MR. AYLSTOCK: In every instance that's been  
21 brought to our attention, Your Honor, we have made sure that  
22 that's happened. So I'm just at a loss as to what the issue  
23 is as well because I think it's all been happening. If it  
24 hasn't, I totally agree, you know, with the provision that  
25 we negotiated that sanctions could be appropriate. But they

1 need to tell us or bring it to the Court's attention, not  
2 seek clarification on a negotiated order when we all know  
3 what we have to do.

4 MR. BERNARDO: Your Honor, if I may, --

5 THE COURT: Yes.

6 MR. BERNARDO: First of all, in fairness, Bryan,  
7 you've not been on any of these phone calls and we've had a  
8 number of them with Renee. And I started this call by  
9 complimenting Renee because I do think Renee's really been  
10 trying to help here.

11 And I pointed out that there are a variety of problems  
12 ranging from people refusing to sign -- and there still are  
13 people refusing to sign. There are a lot of cases that are  
14 coming through this process. There are 600 in all. Just as  
15 we get some resolved, we get another volume of others that  
16 aren't getting resolved but that are coming up.

17 And what I'm trying to do -- and, and Your Honor's  
18 comments were very helpful and I think will be helpful to us  
19 going forward -- is to avoid having to spend as much time as  
20 we're all spending trying to get what should automatically  
21 be coming.

22 So there are still plaintiffs who are taking the  
23 position that they're not going to sign or not getting back  
24 to us at all.

25 But the point that I want to focus on, Your Honor, is

1 what you said earlier. And maybe I'm misunderstanding. But  
2 I think there's a difference between someone signing their  
3 authorization and doing what they're supposed to and  
4 providing the records to Marker's or whatever, whatever  
5 facility it goes to, and then with respect to selected or  
6 specifically identified documents saying, as we do in our  
7 side, "This has a specific privilege and we object to it on  
8 this basis," or, "We're redacting this because of this."

9 But that's not what's happening. It's a wholesale,  
10 "You're not entitled to it. We're objecting to giving you  
11 any mental health records," and Ms. Baggett said the word,  
12 "because they're not relevant."

13 And I think that's what was helpful in Your Honor's  
14 comments, if I understood them, is we're not talking about  
15 relevance here. We're talking about if there is a  
16 recognized privilege that applies to a particular document  
17 or a portion of documents that gets logged.

18 I've not seen a privilege log. I've not heard of a  
19 privilege. I've gotten, "We're not going to make these  
20 available to you. We'll give them to the records facility,"  
21 sometimes, and that's not always the case, but, "They're  
22 just not relevant."

23 And that's where we're seeking the clarification  
24 because I don't think Your Honor wants to be looking at two  
25 dozen motions from Ethicon explaining each fact and

1 circumstance of why we think mental health records are  
2 relevant.

3 If there are some discrete pages from them that there's  
4 an issue of, okay, I understand we have to deal with that  
5 and fight that or argue that or choose not to. But to say  
6 that we're not entitled to any of it because they believe  
7 that they haven't made a particular claim and, therefore,  
8 they're not relevant I don't think is the way this process  
9 was intended to work. And that's what I took from your  
10 comments earlier.

11 THE COURT: I absolutely agree. The way I read  
12 Pre-Trial Order 17, it appears to me that there was already  
13 a presumption made that these records would be relevant, all  
14 of these records, because the only exception that was made  
15 was that if somebody felt there was a privilege that  
16 attached to these psychiatric records, which there are  
17 different, as you pointed out, Mr. Alystock, different  
18 states have different rules that apply specifically to  
19 psychiatric records.

20 So if because of the state that the plaintiff was from  
21 there was some unique statute or something that, that made a  
22 privilege attach to the record, that the plaintiff would  
23 have 10 days once the records were submitted to the vendor  
24 to assert a privilege, a privilege.

25 There's not anything in here about asserting an

1 argument that the record's not relevant. It appears to me  
2 that there was already some agreement made that these  
3 records were going to be produced, and they were going to be  
4 relevant for purposes of discovery, not necessarily  
5 admissible.

6 But I, I think -- I mean, this is the way I read these  
7 orders, that all of these records are to be produced. And  
8 the only reason they might not be would be if there is a  
9 privilege that attaches to a psychiatric record that is  
10 placed on a privilege log within 10 days of the record being  
11 given to the vendor. And if that's not done, then the  
12 vendor automatically releases all those records to the  
13 defendant.

14 So if somebody's withholding records, a whole group of  
15 psychiatric records because they say they're not relevant, I  
16 don't think they can do that. They should not be doing  
17 that. That to me violates the whole premise of these  
18 pre-trial orders.

19 MR. AYLSTOCK: Okay. I, I think that's very  
20 helpful, Judge, and we will spread the word far and wide.

21 MR. BERNARDO: And, Your Honor, we too agree. I  
22 think, I think your words here on the transcript will assist  
23 the parties in trying to cut through this. There may be  
24 some residual issues, but that's different where if there  
25 are residual issues, obviously we can brief those in just a

1 short motion to compel. But I think this will save a lot of  
2 time on both sides as far as putting together motions with  
3 respect to relevance on these records. So I thank you, Your  
4 Honor.

5 THE COURT: All right. Is there anything else you  
6 think we need to do?

7 MR. BERNARDO: If I may, Your Honor, may we  
8 reserve on that and meet and confer with plaintiffs? My gut  
9 reaction is, no, that I think your comments here were  
10 sufficiently specific that we should be able to cut through  
11 this. But if we feel afterward after talking with  
12 plaintiffs' counsel that some supplemental order or  
13 something else would be helpful, may we come back to you?

14 THE COURT: Certainly.

15 MR. BERNARDO: Okay. I'm just trying to spare you  
16 having to put together an order if there may not need to be  
17 one.

18 THE COURT: Okay. No, that -- anything you can do  
19 to spare me from having to put together an order I  
20 appreciate.

21 MR. AYLSTOCK: Thank you, Your Honor.

22 MR. BERNARDO: Especially on a Friday of a holiday  
23 weekend.

24 THE COURT: You all have a nice holiday as well.  
25 Thank you.



1 MR. BERNARDO: Thank you, Your Honor.

2 (Proceedings concluded at 2:02 p.m.)

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7 I, Lisa A. Cook, Official Reporter of the United  
8 States District Court for the Southern District of West  
9 Virginia, do hereby certify that the foregoing is a true and  
10 correct transcript, to the best of my ability, from the  
11 record of proceedings in the above-entitled matter.

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14 s\Lisa A. Cook

May 31, 2016

15 Reporter

Date

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